

### **Remarks**

On a preliminary matter, please note that the Applicant previously filed: 1) NEW POWER OF ATTORNEY (filed with the previous amendment on March 3) and 2) a CHANGE OF ADDRESS (filed on April 22). However, the subject office action was sent to the address of former representative. Please note that the address in the CHANGE OF ADDRESS is the most current address. Kindly make sure that the correct address is documented in the filed

With respect to claims 1, 5 and 7. The applicant has reviewed the examiner's comments concerning the claimed "making possible measurement of the fluid length" does not actually required that the length be actually determined and Deficis makes possible measurement of the fluid length by determining where the end of the fluid length using the fiber optics. Therefore, the applicant's previous remarks should not be used to interpret the claims or for purposes of prosecution history estoppel because the statements are inoperative and have been withdrawn in light of the examiner's explanation.

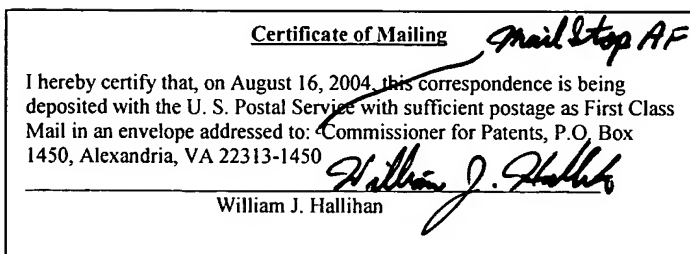
The undersigned attorney noted the non-statutory double-patenting rejection of claims 1 and 2 based upon U.S. Patent No. 6,250,800. The undersigned attorney notes that the rejection no longer applies to the claims 1 and 2 because they have been canceled. Therefore, the rejection should be withdrawn.

Claims 3, 4, 6, 8, and 9 have been amended to incorporate the limitations of the intervening claims. Please note, however, that the term "one end" has been changed to "an end" to clarify that the claim does not mean "one and only one end," but should, instead, be interpreted to mean something like "at least one end." Independent claim 11 has been amended to make a similar change. Additionally Independent claim 11 has been amended to include the limitation found in claim 12, which has been indicated as allowable. Therefore, claims 11-14 and 16-19 should also be in condition for allowance.

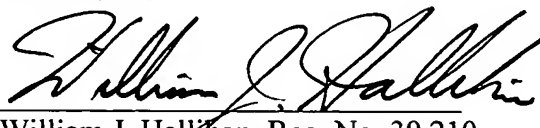
Claim 20 has been amended to include the limitation of the “thermometer body properties and fluid properties together making possible determination of the fluid position outside of the subject body *without requiring the use of a communication link* within the implant to make the determination of the fluid position.” In contrast, Deficis requires fiber optic communication links (2 and 3) and Cotter requires an antenna within reservoir 14. Both communication links can be problematic for certain applications because the communication link in Deficis can allow for easier migration of germs through the opening that is required and Cotter’s rf link can be prone to interference from outside sources, which can be problematic in certain situations.

In lieu of the foregoing remarks, all claims should be in condition for allowance. The undersigned attorney requests the opportunity to discuss any perceived problems with the claims, to further explain any of the points raised herein, and to discuss placing claims in condition for allowance. The undersigned can be reached through his direct phone number (312) 223-0010 extension 144. Please advise when you would be available for a telephone conference.

Respectfully submitted,



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